SUPREME COURT, U. S.

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Supreme Court of the United States

October Term, 1967

No. 216

WALLACE FRANKLIN SATTERFIELD,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT	1
PRIOR PROCEEDINGS	2
STATEMENT OF FACTS	2
QUESTION PRESENTED	5
ARGUMENT	5
CONCLUSION	12
CERTIFICATE OF SERVICE	13

TABLE OF CASES

McCoy v. Commonwealth, 206 Va. 470, 144 S.E. 2d 303 (1965) 5

Jackson v. Denno, 378 U.S. 366 (1964) 6

Miranda v. Arizona, 384 U.S. 436 (1966) 9, 10, 11

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PRELIMINARY STATEMENT

By letter of the Honorable John F. Davis, Clerk of the Supreme Court of the United States, dated October 10, 1967, the Attorney General of Virginia was requested to file a response to the petition for writ of certiorari in the instant case.[1] In accordance with this request, the within brief of the respondent in opposition to the petition for writ of certiorari is filed by the Commonwealth's Attorney for Halifax County, Virginia pursuant to the advice of the Attorney General of Virginia in his letter dated October 11, 1967, to the Clerk of this Court.[1]

[1] Post, Appendix A and B.

PRIOR PROCEEDINGS

On July 30, 1966, petitioner was found guilty by a jury in the Circuit Court of Halifax County of murder in the first degree, and his punishment was fixed at forty years in the penitentiary. His subsequent motion to set aside the verdict was overruled and judgment was entered on the verdict on October 10, 1966. A petition for writ of error to the judgment of conviction was denied by the Supreme Court of Appeals of Virginia on March 7, 1967. The case is currently before this Court upon petition for writ of certiorari to the Supreme Court of Appeals of Virginia, filed in the Supreme Court of the United States by the petitioner on June 2, 1967.

STATEMENT OF FACTS

On the night of January 18, 1966, Dr. N. H. Wooding, one of the Medical Examiners for Halifax County, telephoned Sheriff C. T. Coates and informed him that one Jeffrey Ronald Brenner, age three, died from arsenic poisoning on December 22, 1965. The deceased child was the petitioner's step-son. (T. 91)[1]

After interviewing the mother of the deceased child (petitioner's wife) the next morning, the Sheriff arrested the petitioner and charged him with the murder of the child on December 21, 1965, and he was lodged in jail at 12:40 p.m. The petitioner denied any knowledge of the cause of the child's death, and again, between 6:30 and 7:00 p.m. that evening when the Sheriff interviewed him again, he denied any knowledge of the matter. (T. 92-93) Sheriff Coates told the petitioner he was going home, but if the petitioner wanted to tell him anything else that night

[1] References to the transcript are indicated by the letter "T," followed by the appropriate page number of the Transcript.

to get one of the deputies or jailer to call him. (T. 94)

After the Sheriff had been home a short while, he received a telephone call from the jail that the petitioner wanted to see him. The Sheriff went back to the jail and the petitioner was brought to his office at 8:15 p.m. by two deputies. In the presence of the two deputies, the petitioner, made an oral confession to the Sheriff and then the confession was put on tape. (T. 94-96, 109-111, 129-130, 136-137) The oral confession and the taped confession were concluded at 8:40 p.m. (T. 96) Around noon the next day after the taped confession had been transcribed the petitioner signed it in the presence of the same three officers. (T. 97-98, 130-131, 137)

With the jury excluded, the trial judge heard the Commonwealth's witnesses and the petitioner's witnesses to determine the admissibility of the confession. (T. 90-192)

The Sheriff testified that prior to the taped confession the petitioner had been advised of his "rights" three times, once when the petitioner was arrested, again between 6:30 and 7:00 p.m. and before the oral confession at 8:15 p.m. (T. 92, 94-95, 106-111)

A portion of the taped confession was as follows:

> SHERIFF: You understand, Frank, you don't have to make any statement if you don't want to, you understand that?
>
> PETITIONER: Yes.
>
> SHERIFF: You understand that any statement you make can be used against you in court, you understand that?
>
> PETITIONER: Yes.
>
> SHERIFF: You understand that you have the right to an attorney before you make any statement, you understand that?

PETITIONER: That's right. I reckon. I don't know about that.

SHERIFF: Now wait a minute. You have the right to an attorney before you make any statement, you understand that?

PETITIONER: Oh yes.

SHERIFF: All right. Now nobody has promised you anything?

PETITIONER: No.

SHERIFF: Nobody has promised you any favors of any kind or made any threats towards you?

PETITIONER: No.

SHERIFF: Are you making this statement of your own free will?

PETITIONER: Yes. (T. 95)

And then the confession was concluded as follows:

SHERIFF: Now, Frank, who is in here listening to you while you make this statement besides myself?

PETITIONER: Roy Pruett and I don't know him.

SHERIFF: Roy Pruett and Monroe Anderson, both of them are Deputy Sheriffs, both of them have on uniforms? Correct?

PETITIONER: That's right.

SHERIFF: All right and you have given this statement of your own free will and accord?

PETITIONER: That's right. (T. 96)

The petitioner testified that he had confessed only because he was cold, sick, tired, hungry, cursed by, and afraid of, the Sheriff, and that if he confessed, the Sheriff said he could go home. (T. 153-155, 157-158, 161, 166-167, 169-170). The petitioner claimed the Sheriff had denied bond until he con-

fessed, but he was not supported in this charge by his own father, Bedford Satterfield. (T. 146-147) Sam Rogers, brother-in-law of the petitioner, would not support this charge either. (T. 185) The Sheriff denied the charges of the petitioner. (T. 98, 103-104, 106) The two deputies denied the charges as well. (T. 131-132, 137-139)

After hearing testimony and arguments for two hours and fifty minutes, the trial judge ruled that the confession "is certainly voluntary as far as that goes without any question" and ordered that it be admitted into evidence. (T. 222-223)

QUESTION PRESENTED

Were the constitutional rights of the petitioner infringed by the trial court's ruling admitting into evidence the petitioner's confession obtained by the Sheriff in an interview initiated by the petitioner while in custody?

ARGUMENT

The Virginia procedural rule governing admissions of confessions was recently stated by Mr. Justice Carrico in *McCoy* v. *Commonwealth,* 206 Va. 470, 475, 144 S.E. 2d 303, 308 (1965):

> "The respective roles of the court and jury with regard to confessions are well established in this Commonwealth and were best delineated by Mr. Justice Spratley in Upshur v. Commonwealth, 170 Va. 649, 655, 197 SE 435, as follows:
>
> "In Virginia, it is the function and the duty of the trial judge in the first instance before admitting a confession, to determine from the evidence, in the absence of the jury, whether the confession has been freely and voluntarily made. In this decision of a question of fact he has a wide discretion . . .

> "Thus the admissibility of a confession is a question for the court, and not for the jury. The court does not vouch for the confession, but admits it to the jury to be considered and weighed like other evidence. Its weight, its value and its sufficiency is a question for the jury."

The rule in Virginia relating to the admissibility of confessions was approved by this Court's decision in *Jackson* v. *Denno,* 378 U.S. 368 (1964). The practice required by Virginia and by the pronouncements of this Court in the *Jackson* case were followed by the trial court in the case at bar. It conducted a full hearing on the admissibility issue in the absence of the jury; it ruled that the confession was voluntary without going into the truth or falsity of the confession. And finally, the court permitted the petitioner to explore before the jury the full circumstances surrounding the giving of the confession, so that the jury could consider voluntariness as affecting weight or credibility of the confession.

Here the evidence of the Commonwealth, in the absence of the jury, was amply sufficient to show the petitioner confessed voluntarily in traditional terms. Because the petitioner attacks the credibility of the witnesses and the confession, the respondent will answer this contention before discussing the question of the infringement of the petitioner's constitutional rights.

The petitioner's story that he was cold, sick, tired, hungry, cursed, afraid, etc., that he was promised bond in return for his confession merely raised, at best, a controverted issue of fact. (T. 153-155, 157-158, 161, 166-167, 169-170) That issue was for the trial court to determine and it cannot be said to have erred in accepting that version of the evidence which proved that the petitioner was not cursed and mistreated, that he made no complaints about

the state of his health and that no promise of bond was made to the petitioner if he confessed. (T. 95, 98, 103-104, 106, 131-132, 137-139, 146-147, 185)

The trial judge had the opportunity to hear the witnesses, observe their demeanor, their candor on the witness stand and from what he heard and observed, made his decision. The testimony of the two deputies is in direct conflict with many of the petitioner's complaints. Deputy Sheriff Pruitt, who testified he had known the petitioner twelve to fifteen years, said the petitioner "looked like he always did"; that he made no complaints to him of being hungry, tired or sick; that he was in a single cell with the same bed, bedding, sheets, and pillows that every other prisoner had; and that the defendant never complained to him about any discomfort at all. (T. 137-139) Deputy Sheriff Anderson's testimony is substantially the same as Pruitt's, however, Anderson had not known the petitioner very long. (T. 129-132)

The petitioner's contention that the Sheriff created a situation in which the petitioner's freedom on bond depended upon a confession is contrary to the petitioner's signed statement, the testimony of the Sheriff, the petitioner's father and brother-in-law. (T. 95, 98, 103-104, 106, 146-147, 185)

The petitioner's contention that the Sheriff overrode his attempt to invoke silence simply ignores the fact that the petitioner sent for the Sheriff. (T. 94, 130) Petitioner argues that when the tape recorder was turned off one time, he was invoking his right to silence, but on cross examination of Deputy Sheriff Anderson, the trial court heard the following exchange:

> QUESTION: Now, Mr. Anderson, do you know why it was turned off during the course of the interrogation?

ANSWER: Do I know why it was turned off?

QUESTION: Yes.

ANSWER: Well, the Sheriff asked Mr. Satterfield what did he poison that child for and put the poison in the drink, was it to draw insurance, and Mr. Satterfield dropped his head, no sir, and he worried for a right good while, and then the Sheriff cut it off, and then he raised up and said, "Yeah, that's what I put the poison in the drink for." (T. 135)

The only testimony heard by the trial judge on the length of time the tape recorder was turned off was given by the Sheriff as being not over a minute. (T. 119).

This twenty-three year old petitioner claims he was so weak minded the Sheriff made him confess (T. 170-172), and yet, the petitioner had a sixth grade education, had been gainfully employed for three years at a textile plant, had an automobile operator's license, and possessed sufficient cunningness to forge a check on Harry Mapp, a local attorney, a year or two before his confession was made. (T. 113, 151, 171-172)

The record in this case conclusively shows that before he confessed, the petitioner had been arrested upon a valid warrant; that he was lodged in the county jail; that he had not been subjected to lengthy interrogation; that he was allowed to see members of his family before he confessed (T. 125); that on the evening he confessed, he sent for the sheriff who was at home at the time; that he was told that he did not have to make any statement if he did not want to; that any statement he made could be used against him in court; and that he had a right to an attorney before he made a statement. He acknowledged that he had not been promised anything; that no favors of any kind had been promised; that no one had made any threats toward him; and he stated that he was making the statement of his

own free will. He acknowledged that two deputies were present with the Sheriff when his statement was given, and again, at the conclusion of the statement, he states that he has given the statement of his own free will and accord. The next morning around noon, the petitioner signed a typed copy of his statement in the presence of the same three witnesses. (T. 94-98, 130-131; 137).

It is submitted the trial judge did not abuse his discretion when he ruled:

> "The matter has been well argued and presented to the Court. At the time the statement was taken, of course, they were holding the Miranda case. And, I believe all the rules and requirements were met by the Sheriff as far as he was concerned in advising and warning this man. Everybody agrees, I suppose, it was voluntary, because the Sheriff started talking to him about six-thirty, and the man didn't talk. So, he stopped at that time and he told him if he did want to talk anymore to let him know. And the Sheriff was called and he came back. And the man gave the statement.
>
> "So I think that is certainly voluntary as far as that goes without any question. Now, as to the advising the man to an attorney, I think that the requirements were met. I think the gentleman must have understood what an attorney was. It's true that practically everybody refers to representatives as a lawyer. There may be some as attorneys, but I think they all know the term is used synonymously I think. And they understand what it means.
>
> "So I think under the circumstances in this case that the Miranda case is met in the spirit at least. And I think we should allow the statement to go in evidence." (T. 222-223)

The petitioner cites *Miranda* v. *Arizona,* 384 U.S. 436 (1966), but the facts in that case and the facts in the three

companion cases included in that decision are so different from the case at bar that it is not decisive of the issue here.

The factual variance in the four cases is easily demonstrable. In *Miranda*, (1) the accused was not in any way apprised of his right to consult with an attorney (2) he was not warned effectively against self-incrimination (3) he was held incommunicado and interrogated for two hours (4) the interrogation was initiated by law enforcement officers.

In *Vignera*, (1) the accused was given no warnings (2) he was not advised of any of his rights (3) he was held incommunicado and interrogated at 11:00 p.m., some eight hours after his arrest (4) the interrogation was initiated by law enforcement officers.

In *Westover*, (1) the accused was held incommunicado (2) before any warnings were ever given him by the FBI agents, he had been in custody for over 14 hours and had been interrogated at length during that period by local police (3) the interrogations were initiated by law enforcement officers.

In *Stewart*, (1) the accused was held incommunicado and interrogated nine times over a period of five days (2) he was not advised of his right to remain silent (3) he was not advised of his right to counsel (4) the interrogations were initiated by law enforcement officers.

In striking contrast is the situation here under consideration. In the case at bar, (1) petitioner was allowed to see members of his family before he confessed (2) he was not subjected to lengthy interrogation (3) he initiated the interrogation by sending for the Sheriff (4) he was told he did not have to make any statement if he did not want to (5) that any statement he made could be used against him in court (6) that he had a right to an attorney before he made any statement.

Moreover, the *Miranda* case does not say a law enforcement officer may not listen to one who wishes to confess to a crime. Mr. Chief Justice Warren makes this very clear:

> "In dealing with statements obtained through interrogation, we do not purport to find all confessions inadmissible. Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of the warnings and counsel, but whether he can be interrogated. There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today." 384 U.S. 478

Under the *Miranda* decision the decisive stage is reached when "custodial interrogation begins," and "custodial interrogation" is defined as questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. 384 U.S. 444 In the case at bar, the questioning which resulted in the petitioner's confession was not initiated by law enforcement officers. The petitioner called for the Sheriff, and between 8:15 p.m. and 8:40 p.m., just twenty-five minutes, the petitioner unburdened his soul—this included his oral confession and the taping of his confession in a question and answer form.

In the face of the foregoing, the confession was freely and voluntarily given. Its introduction into evidence, under such circumstances, violated no established principles of

due process. Here, we have a petitioner who has been lodged in his cell for the night, and after reflecting upon his relationship to himself, to his family and to society, he decides to confess. He is not motivated by anything the law enforcement officers have done. And through his own shame for poisoning a three year old child, he cries out, "Call the Sheriff." This petitioner had been put to bed. The Sheriff had gone home. Where are there any compelling influences by a law enforcement officer in this situation?

Clearly, the trial judge correctly determined that the factual situation in the *Miranda* case was so different from that which obtained in the case at bar that the decision in the former was not decisive of the issue here.

In the light of the foregoing, counsel for the respondent submit that no constitutional right of the petitioner was infringed by the trial court admitting the confession into evidence.

CONCLUSION

For the foregoing reasons, counsel for the Commonwealth submit that the petition for writ of certiorari in this case should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, J. Willard Greer, Commonwealth's Attorney for Halifax County, Virginia, a member of the Bar of the Supreme Court of the United States and one of counsel for appellee in the above captioned matter, hereby certify that a copy of this Brief for Respondent in Opposition To The Petition for Writ of Certiorari has been served upon counsel of record for the petitioner herein by depositing the same in the United States Post Office, with first-class postage prepaid, this 6th day of November, 1967, pursuant to the provisions of Rule 33(1) of the Rules of the Supreme Court of the United States, as follows: Henry W. McLaughlin, Jr., Esq., McLaughlin and McLaughlin, Courthouse Square, Halifax, Virginia, counsel for petitioner.

J. WILLARD GREER
Commonwealth's Attorney of
Halifax County, Virginia